



MARYLAND Department of Health

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Robert R. Neall, Secretary

Maryland State Board of Dental Examiners

Spring Grove Hospital Center • Benjamin Rush Building
55 Wade Avenue/Tulip Drive • Catonsville, MD 21228
Main Line: 410-402-8501 • health.maryland.gov/dental

February 4, 2020

The Honorable Shane E. Pendergrass, Chair
Health and Government Operations Committee
Room 241, House Office Building
Annapolis, Maryland 21401-1991

RE: HB 259-Health Occupations-Diagnostic Evaluation and Treatment of Patients-Disciplinary Actions – Letter of Concern

Dear Chair Pendergrass and Committee Members:

The Maryland State Board of Dental Examiners is submitting this letter of concern for HB 259 – Health Occupations-Diagnostic Evaluation and Treatment of Patients - Disciplinary Actions.

The bill prohibits a health occupations board such as the Dental Board from disciplining a licensee because of the licensee's use of a diagnostic evaluation or treatment of a patient that is integrative, complementary, alternative, or non-conventional, if the health care practitioner discloses the nature of the treatment and obtains written consent from the patient for the treatment. A board may discipline the licensee if it determines that the diagnostic evaluation, testing, or treatment has a significant safety risk greater than the conventional methods, and that the risk is not outweighed by the potential benefits of the evaluation, testing, or treatment, or by clear and convincing evidence that the health care practitioner knew that the diagnostic or treatment method did not have a reasonable basis and was intended to defraud the patient.

The Dental Board believes that the bill is primarily intended to allow patients with serious or life-threatening diseases or conditions to obtain non-conventional or alternative treatment from practitioners, who do not fear disciplinary actions from their licensing board for the use of such treatment. The Board believes that this is a laudable purpose especially when conventional treatment methods have failed. However, the Board notes that the bill as proposed will prevent the Board from disciplining those dentists who employ treatment methods that are considered useless. For example, the Board previously learned that a dentist was using quartz crystals and other gems to treat patients. The Board has also been made aware that some dentists administer high intravenous dosages of vitamin C. Under the present law the Board could discipline these dentists because there is no credible evidence to indicate that either crystals and gems, or vitamin C have any therapeutic value. Under the proposed bill the Board could take no action because the crystals and vitamin C, although considered useless for dental treatment, do not pose a safety risk. In addition, the Board could take no action under the second prong of the test because the Board would be required to prove by clear and convincing evidence that the dentist "knew" that the treatment did not have a reasonable basis and was intended to defraud the patient. From a legal standpoint it would be nearly impossible for the Dental Board or any licensing board to prove what a

dentist actually “knew.” In the absence of an affirmative statement by the dentist that he or she knew that the treatment had no reasonable basis, and that he or she was intending to defraud the patient, no disciplinary action could be taken by the Board. In short, if a dentist employed a treatment method that had no therapeutic value, and that treatment did not pose a safety risk, the Board would be powerless to take any disciplinary action against the dentist.

For the same reasons, the Board would be powerless to take action if a dentist were to over treat a patient. The dentist need only obtain written consent from the patient and perform a number of unnecessary procedures referring to those procedures as “alternative” or “non-conventional”. Since the procedures which are designed to increase the dentist’s profits do not pose a safety risk, the Board could take no disciplinary action.

In addition, the Board has concerns regarding the provisions of the bill dealing with record keeping and billing. The proposal provides that a health care provider who utilizes non-conventional or alternative methods is exempt from discipline for violating any record keeping or billing requirements, if the health care provider “acted in good faith to comply with the intent of the requirements” and “has not acted in a way that is false or misleading.”

Under present law and regulations, all dentists must keep accurate handwritten or electronic record-keeping of their treatment and billing, regardless of their subjective intent. A treating dentist, and subsequent dentists, must be able to refer to treatment records to evaluate prior treatment, especially those records indicating exposure to radiographs. In the event of an investigation, the Board must also be able to evaluate the treatment provided. The bill will allow a dentist who provided non-conventional treatment to avoid the law and maintain little or no record keeping, without fear of discipline. The dentist need only state that he or she acted in good faith, and that any errors in the recording of acts or in omissions, were unintentional. The Board would then be powerless to take any disciplinary action since it would be nearly impossible to disprove the dentist’s subjective assertion that they “act[ed] in good faith.”

The opinion of the Maryland State Board of Dental Examiners expressed in this letter of concern does not necessarily reflect that of the Department of Health or the Administration.

I hope that this information is useful. If you would like to discuss this further, please contact me at 301-367-2352, jgoldsm217@comcast.net, or Dr. Arpana Verma, the Board’s Legislative Committee Chair at 240-498-8159, asverma93@gmail.com. In addition, the Board’s Executive Director, Mr. Frank McLaughlin, may be reached at 443-878-5253, frank.mclaughlin@maryland.gov.

Sincerely,



James P. Goldsmith, D.M.D.
Board President